

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE

JAMES E. MATHEWS,

Plaintiff,

v.

No.: 3:11-cv-544
Judge Phillips

JOSEPH P. MATTINA,

Defendant.

MEMORANDUM AND ORDER

This is a *pro se* prisoner's civil rights action brought pursuant to 42 U.S.C. § 1983. On motion of the plaintiff, default was entered against the defendant. The defendant, by and through counsel, has now filed a motion to set aside the entry of default. The record reflects that on August 3, 2012, the court allowed plaintiff to proceed without prepayment of fees or costs and ordered plaintiff to complete the service packet, which he did. The U.S. Marshals Service then issued process by certified mail addressed to the defendant at 800 Howard Baker Avenue, Knoxville, Tennessee, 37915, which is the address for the Knoxville Police Department. On August 30, 2012, Adam Minner accepted the certified mail as agent for the defendant.

In support of his motion, defendant has submitted his affidavit and states that he was not served with the summons and complaint. [Doc. 38, Motion to Set Aside Entry of

Default, Exhibit A, Affidavit of Joseph P. Mattina, p. 1]. He further states that Adam Minner, who is employed in the personnel department of the City of Knoxville Police Department, does not possess authority to receive process on his behalf. [*Id.*]. Under the circumstances, the motion to set aside entry of default [Doc. 38] is **GRANTED**. The Clerk is **ORDERED** to **SET ASIDE** the entry of default previously entered in this cause. Fed. R. Civ. P. 55(c).

Counsel for defendant is **ORDERED** to inform the court, within fifteen (15) days of the entry of this Memorandum and Order, whether counsel will accept service of process on behalf of the defendant or, if not, the address at which defendant may best be served with process.

ENTER:

s/ Thomas W. Phillips
United States District Judge